

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Kristina Ciaramitaro,

Plaintiff,

Case No. 23-11805

v.

Judith E. Levy

United States District Judge

General Motors, LLC,

Mag. Judge Curtis Ivy, Jr.

Defendant.

_____ /

**ORDER DENYING DEFENDANT’S MOTION TO DISMISS
COUNT II [6]**

On September 5, 2023, Defendant General Motors, LLC filed a motion to dismiss Count II pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 6.) However, a motion asserting that a plaintiff failed to state a claim under Rule 12(b)(6) “must be made before the pleading if a responsive pleading is allowed.” Fed. R. Civ. P. 12(b). Earlier that same day, September 5, 2023, Defendant filed an answer to the complaint. (ECF No. 5.) Defendant’s answer addressed all counts, including Count II. (*Id.*)

Accordingly, Defendant's motion to dismiss Count II pursuant to Rule 12(b)(6) (ECF No. 6) is DENIED because it is untimely. *See Vannuyen v. Kaiser Found. Health Plan of Ohio*, No. 1:07cv3358, 2008 U.S. Dist. LEXIS 137612, at *1–2 (N.D. Ohio Aug. 8, 2008) (denying partial motion to dismiss because it was filed after the answer). The Court notes that Plaintiff's motion for leave to amend the complaint is still pending. (ECF No. 16.) If Plaintiff's motion is granted, Defendant will have another opportunity to file a motion to dismiss pursuant to Rule 12(b).

IT IS SO ORDERED.

Dated: June 7, 2024
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 7, 2024.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager